## CCRB INVESTIGATIVE RECOMMENDATION

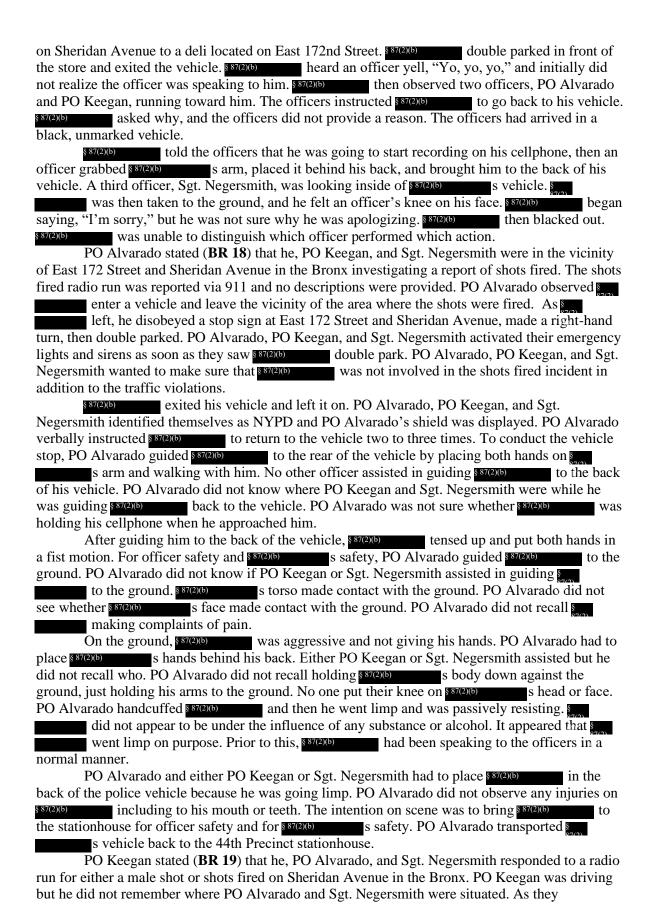
Investigator:		Team:	CCRB Case #:	✓ Force	✓ Discourt.	□ U.S.
Kelly Lyon		Squad #11	202002737	✓ Abuse	O.L.	☐ C.S.  ✓ Injury
Keny Lyon		Squau #11	202002737	Abuse	□ 0.L.	<b>v</b> Injury
Incident Date(s)		Location of Incident:		Precinct:	18 Mo. SOL	EO SOL
Thursday, 04/09/2020 10:30 Pl 04/09/2020 10:45 PM	M, Thursday,	§ 87(2)(b) Precinct stationhouse	and the 44th	44	10/9/2021	5/4/2022
Date/Time CV Reported		CV Reported At:	How CV Reporte	d: Date/Tim	e Received at CCI	RB
Fri, 04/10/2020 1:13 AM		IAB	Phone	Thu, 04/1	6/2020 11:29 AM	1
Complainant/Victim	Type	Home Addr	ess			
Subject Officer(s)	Shield	TaxID	Command			
1. SGT Paul Negersmith	04523	945263	044 PCT			
2. POM Andrew Alvarado	23931	962919	044 PCT			
3. POM Adam Keegan	03588	959722	044 PCT			
Officer(s)	Allegatio	on		Inv	estigator Recon	nmendation
A.POM Andrew Alvarado	Abuse: A		in the Bronx, Poli		o .	
		Alvarado interfered wit		s use of		
D.CCT D. 1 November 14		ng device.	in the Daniel Com-	( D. 1		
B.SGT Paul Negersmith	Force: A Negersm	ith used physical force	in the Bronx, Serge against § 87(2)(b)	eant Paul		
C.POM Andrew Alvarado	Force: A Andrew	t <sup>§ 87(2)(b)</sup> Alvarado used physical	in the Bronx, Police force against § 87(2)(6)			
D.POM Andrew Alvarado	Discourte Officer A	esy: At <sup>\$ 87(2)(b)</sup> Andrew Alvarado spoke al.	in the Bronx discourteously to a			
E.SGT Paul Negersmith	Force: A Negersm	t § 87(2)(b) ith used physical force	in the Bronx, Sergagainst an individu			
F.SGT Paul Negersmith	Abuse: A Negersm	at <sup>§ 87(2)(b)</sup> ith seized <sup>§ 87(2)(b)</sup>	in the Bronx, Serg s property.	geant Paul		
G.POM Andrew Alvarado		esy: At the 44th Precinc Andrew Alvarado spoke				
H.SGT Paul Negersmith		At the 44th Precinct stati ith searched the vehicle was an occupant.		Paul		
I.POM Andrew Alvarado		at the 44th Precinct stati Alvarado did not obtain				
J.POM Adam Keegan		at the 44th Precinct stati eegan did not obtain me				
K.POM Andrew Alvarado		At the 44th Precinct stati Alvarado failed to provi ss card.		fficer with		

Officer(s)	Allegation	Investigator Recommendation
L.POM Adam Keegan	Abuse: At the 44th Precinct stationhouse, Police Officer Adam Keegan failed to provide with a business card.	

## **Case Summary**

On April 10, 2020, Sgt. Paul Negersmith of the 44th Precinct, filed this complaint with IAB by phone on behalf of \$87(2)(b) It was received at the CCRB on April 16, 2020, under IAB log § 87(2)(b) On April 9, 2020, at approximately 10:30 p.m., in the vicinity of § 87(2)(b) the Bronx, \$87(2)(6) double parked his vehicle, exited, and approached the deli at that location. PO Andrew Alvarado and PO Adam Keegan of the 44th Precinct walked up behind him and instructed him to return to his vehicle. § 87(2)(b) allegedly told the officers that he was going to start recording on his cellphone, then PO Alvarado grabbed \$87(2)(b) s phone and began to back to the vehicle (Allegation A: Abuse of Authority, §87(2)(g) Alvarado and PO Keegan escorted \$87(2)(b) to the street and Sgt. Negersmith took over for PO Keegan. PO Alvarado and Sgt. Negersmith brought (\$872) to the back of his vehicle. turned suddenly to face PO Alvarado, and PO Alvarado and Sgt. Negersmith brought to the ground (Allegations B and C: Force, \$87(2)(g). PO Keegan walked over and assisted with handcuffing § 87(2)(b) An unidentified bystander observed the arrest and walked into the street. PO Alvarado told the individual to "Get on the fucking sidewalk," (Allegation D: Discourtesy, \$37(2)(g) Negersmith instructed the individual to get off the sidewalk and then walked over and pushed him onto the sidewalk (Allegation E: Force, § 87(2)(g) was placed into the police vehicle and Sgt. Negersmith instructed PO Alvarado to transport \$87(2)(6) s vehicle to the 44<sup>th</sup> Precinct stationhouse (Allegation F: Abuse of Authority, \$87(2)(g) At approximately 10:45 p.m., at the 44<sup>th</sup> Precinct stationhouse in the Bronx, PO Keegan, PO Alvarado, and Sgt. Negersmith brought \$87(2)(b) to the desk area. \$87(2)(b) fell to the ground on his own and PO Alvarado and PO Keegan helped him into a chair. PO Alvarado stated, "There you go, bro, a chair like you're in fucking kindergarten" (Allegation G: Discourtesy, was then placed in the holding cell area. Per Sgt. Negersmith's instructions, PO Alvarado and PO Keegan went outside and searched s vehicle in the 44th Precinct stationhouse parking lot (Allegation H: Abuse of . Before he was released, \$87(2)(b) allegedly asked PO Alvarado and PO Keegan for medical attention and for their business cards (Allegations I, J, K, and L: Abuse of Authority, § 87(2)(g) § 87(2)(b) was released with three summonses for failure to stop at a stop sign, double parking, and disorderly conduct. The investigation obtained five cellphone videos from \$87(2)(b) depicting the surveillance footage from the store located at in the Bronx (BR 01, BR 02, BR 03, BR 04, and BR 05; videos, BR 06; summaries) and five body-worn camera videos (BR 07, BR 08, BR 09, BR 10, and BR 11; videos, BR 12, BR 13, BR 14, BR 15, and BR 16; summaries). **Findings and Recommendations** Allegation (A) Abuse of Authority: At § 87(2)(b) in the Bronx, Police Officer Andrew Alvarado interfered with \$87(2)(6) s use of a recording device. Allegation (B) Force: At § 87(2)(b) in the Bronx, Sergeant Paul Negersmith used physical force against § 87(2)(b) Allegation (C) Force: At \$87(2)(b) in the Bronx, Police Officer Andrew Alvarado used physical force against § 87(2)(b) Allegation (F) Abuse of Authority: At \$87(2)(6) in the Bronx, Sergeant Paul Negersmith seized § 87(2)(b) s property. It was undisputed that § 87(2)(b) double parked his vehicle and then walked away from PO Alvarado, PO Keegan, and Sgt. Negersmith's vehicle which had emergency lights engaged. stated (BR 17) that he was parked in the vicinity of \$87(2)(b) in the in the Bronx inside of his grandmother's red Jeep. §87(2)(b) then drove

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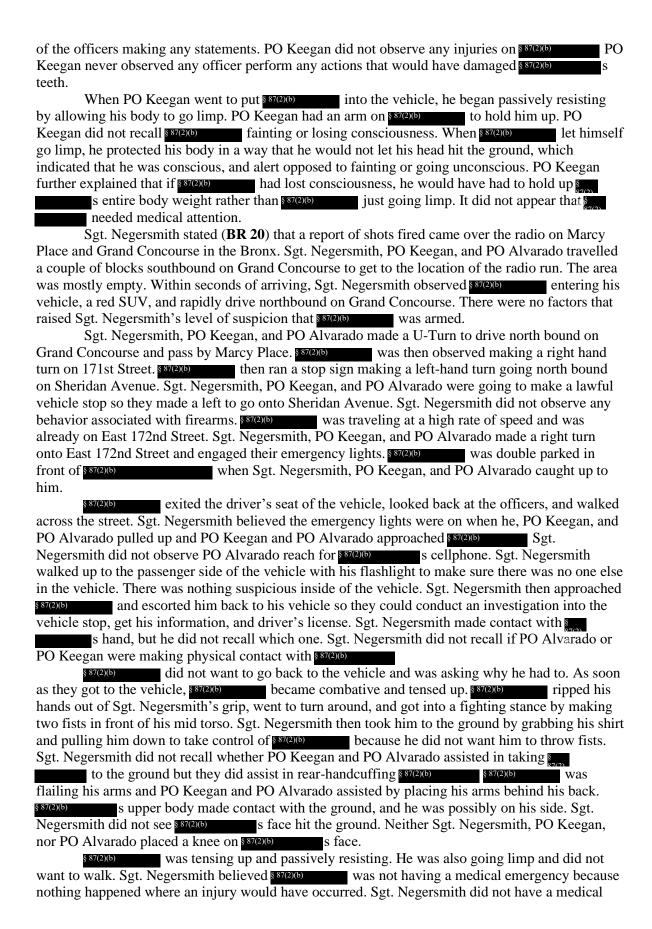


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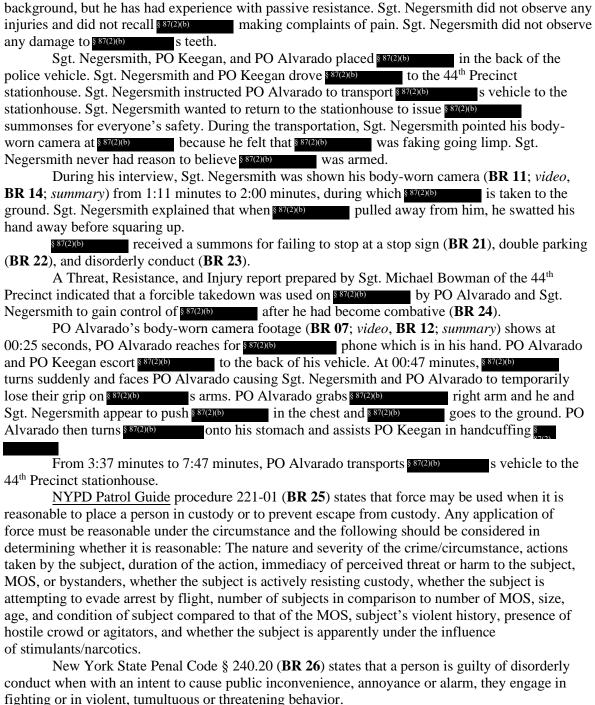
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approached the scene, they saw a vehicle taking off at a "pretty good rate." PO Keegan did not remember how fast the vehicle was moving or whether it was going above the speed limit. PO Keegan did not remember whether they approached Sheridan Avenue with their lights and sirens engaged.

PO Keegan, PO Alvarado, and Sgt. Negersmith started following the vehicle, driven by who ran at least one stop sign. PO Keegan, PO Alvarado, and Sgt. Negersmith put on their lights and sirens to try to pull \$87(2)(b) over and he went several blocks before stopping. did not appear as if he was going to comply with being pulled over because he did not slow down. PO Keegan did not remember whether he went over the loudspeaker to try to communicate with § 87(2)(b) There were no conditions present that would have prevented from seeing the emergency lights or hearing the siren. [87(2)(b)] eventually stopped in front of § 87(2)(b) in the Bronx and double parked alongside parked vehicles. PO Keegan, PO Alvarado, and Sgt. Negersmith pulled up behind \$87(2)(b) and he got out of his vehicle. PO Keegan did not remember whether \$87(2)(b) had exited his vehicle before or after he parked the police vehicle. \$87(2)(b) started walking down the block and did not look back or appear to recognize that there were police officers behind him. PO Keegan, PO Alvarado, and Sgt. Negersmith exited their vehicle and walked quickly did not appear to be going anywhere specific rather he appeared to be walking down the sidewalk. PO Keegan approached \$87(2)(b) first on the sidewalk and said, "Sir, come back here, sir, come back here," and walked over very close to \$87(2)(b) Keegan did not remember saying anything else or announcing himself as a police officer. PO Alvarado arrived within seconds. was holding his cellphone in his hand, and he did not tell the officers that he wished to record. PO Keegan did not remember any officer taking \$37(2)(6) s phone, but he stated it was possible because they do not like to have civilians holding objects in their hands while interacting with them because they can use them to hit the officers over the head. PO Keegan stated that no officer would do anything to prevent [887(2)(b)] from recording but given the gravity of the circumstances, that they responded to a gun run, that \$87(2)(6) quickly drove away from the scene, failed to stop at a stop sign, and then walked away from his vehicle, it would be common practice to prevent him from holding an object in his hand while being stopped. PO Keegan escorted \$87(2)(b) by lightly placing a hand on his shirt and brought him back to his vehicle to conduct the vehicle stop. §87(2)(6) tensed up as if he did not want to walk back to the vehicle. §87(2)(b) soverall demeanor also reflected that he did not want to walk voluntarily with the officers. PO Keegan did not remember \$87(2)(b) saying anything and did not remember what he said to § 87(2)(b) PO Keegan went to look in the window of § s driver's seat for potential weapons and Sgt. Negersmith and PO Alvarado brought to the back of his vehicle. While PO Keegan was looking in the window of \$87(2)(b) s vehicle, he heard something to the effect of "Don't ever tense up to a police officer," or, "you don't square up to a police officer," but he did not know whether PO Alvarado or Sgt. Negersmith said it. PO Keegan either already on the ground or nearly getting taken to the ground but he did not get a good look at it because he had been looking through the window of \$87(2)(b) PO Keegan did not know whether PO Alvarado, Sgt. Negersmith, or both took 887(2)(b) ground. § 87(2)(6) was on his stomach on the ground and PO Keegan did not see § 87(2)(6) head make impact with the ground. PO Keegan never saw PO Alvarado or Sgt. Negersmith place a s head or upper body. PO Keegan quickly walked over and put handcuffs on \$87(2)(6) PO Alvarado likely assisted in handcuffing by holding \$87(2)(b) shands behind his back. \$87(2)(b) did not cause any issues when he was on the ground. PO Keegan did not know what Sgt. Negersmith was doing. PO Keegan, PO Alvarado, and Sgt. Negersmith stood 887(2)(6) up. Initially, there were no issues bringing \$87(2)(b) to the police vehicle. PO Keegan did not recall \$87(2)(b)



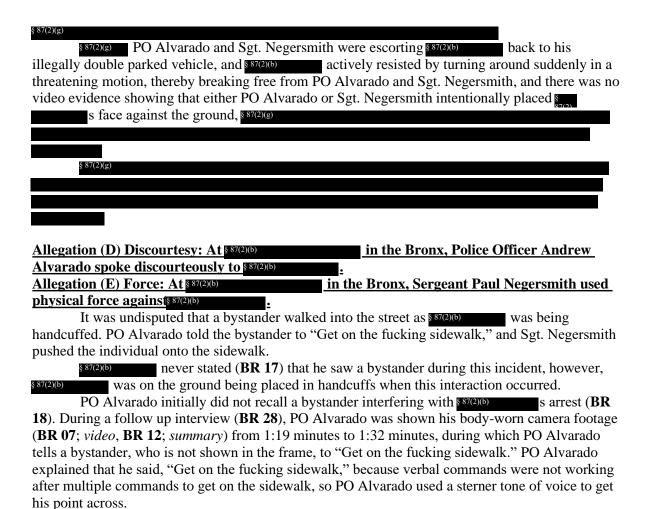
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New York City Traffic Rules § 4-08 (f)(1) (**BR 27**) states that no person shall double park on the roadway side of a vehicle stopped, standing, or parked at the curb.

In <u>People v. Tardi</u>, 28 N.Y.3d 1077 (2016) (**BR 38**) the court found that officers are permitted to tow a vehicle upon a driver's arrest to situations in which such action is necessary to ensure the safety of the vehicle and its contents and where releasing the vehicle to an owner or designee is not otherwise appropriate.

	§ 87(2)(g)	there was no audio capturing § 87(2)(b)	stating he wished to record the officers
§ 87(2)(g)			



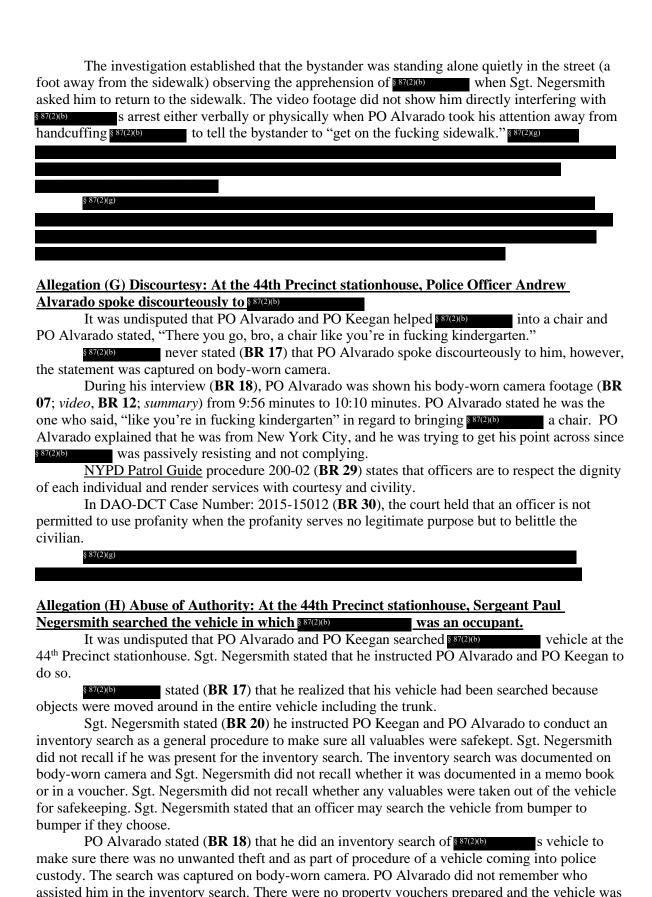
Sgt. Negersmith stated (**BR 20**) that a bystander started to approach, so Sgt. Negersmith approached the individual and told him to get back. Sgt. Negersmith guided the bystander by straightening out his arm and making contact with the individual. Sgt. Negersmith stated that the individual was not pushed, rather he returned to the sidewalk on his own accord.

Sgt. Negersmith was shown his body-worn camera footage (**BR 11**; *video*, **BR 14**; *summary*) from 2:11 minutes to 2:30 minutes during which Sgt. Negersmith appears to push the bystander back onto the sidewalk. Sgt. Negersmith explained that he reached out his arm just to push the bystander back because he was too close to the vehicle and the officers.

NYPD Patrol Guide procedure 200-02 (**BR 29**) states that officers are to respect the dignity of each individual and render services with courtesy and civility.

In DAO-DCT Case Number: 2015-15012 (**BR 30**), the court held that an officer is not permitted to use profanity when the profanity serves no legitimate purpose but to belittle the civilian.

<u>Patrol Guide</u> procedure 221-01 (**BR 25**) states that force may be used when it is reasonable to place a person in custody or to prevent escape from custody. Any application of force must be reasonable under the circumstance and the following should be considered in determining whether it is reasonable: The nature and severity of the crime/circumstance, actions taken by the subject, duration of the action, immediacy of perceived threat or harm to the subject, MOS, or bystanders, whether the subject is actively resisting custody, whether the subject is attempting to evade arrest by flight, number of subjects in comparison to number of MOS, size, age, and condition of subject compared to that of the MOS, subject's violent history, presence of hostile crowd or agitators, and whether the subject is apparently under the influence of stimulants/narcotics.



returned to \$87(2)(b) that day. PO Alvarado did not remember whether a supervisor instructed

him to perform the inventory search. PO Alvarado did not recall whether Sgt. Negersmith assisted in the vehicle search.

PO Keegan stated (**BR 19**) that he did not remember searching \$\frac{87(2)(6)}{2}\$ s vehicle at the stationhouse.

PO Keegan's body-worn camera footage (**BR 10**; *video*, **BR 13**; *summary*) shows, starting at 1:00 minute, PO Keegan and PO Alvarado searching \$\frac{87(2)(6)}{2}\$ s vehicle at the stationhouse.

In *People v. Padilla*, 21 N.Y.3d 268 (2013) (**BR 31**) the court found that an inventory

In <u>People v. Padilla</u>, 21 N.Y.3d 268 (2013) (**BR 31**) the court found that an inventory search of a vehicle, following a lawful arrest of a driver of a vehicle that is required to be impounded, was permissible as the search was in accordance with police procedure, resulted in a meaningful inventory list, and the primary objective was to preserve the property of the defendant, protect the police from a claim of lost property, and protect police and others from dangerous instruments.

<u>NYPD Patrol Guide</u> procedure 218-13 (**BR 32**) states that whenever property comes into the custody of the Department, all valuables inventoried from a vehicle must be removed and invoiced in a property voucher.

Sgt. Negersmith stated that he instructed PO Alvarado and PO Keegan to inventory search the vehicle and neither officer prepared a voucher or meaningful inventory list

Allegation (I) Abuse of Authority: At the 44th Precinct stationhouse, Police Officer Andrew
Alvarado did not obtain medical treatment for § 87(2)(b)
Allegation (J) Abuse of Authority: At the 44th Precinct stationhouse, Police Officer Adam
Keegan did not obtain medical treatment for \$87(2)(b)
Allegation (K) Abuse of Authority: At the 44th Precinct stationhouse, Police Officer Andrew
Alvarado failed to provide \$87(2)(b) with a business card.
Allegation (L) Abuse of Authority: At the 44th Precinct stationhouse, Police Officer Adam
Keegan failed to provide \$87(2)(b) with a business card.
stated (BR 17) that he regained consciousness at the 44th Precinct
stationhouse inside of the holding cell. \$87(2)(b) states as lip was bleeding, and his veneers were
chipped. [87(2)(6)] also had a cut on the back of his head and was having trouble breathing.
There were bruises on \$87(2)(b) s face and knee. \$87(2)(b) requested medical treatment and
PO Alvarado and PO Keegan did not call EMS. \$87(2)(b) was at the stationhouse for three to
four hours.
was released with summonses and asked again for medical treatment and PO

Alvarado and PO Keegan told him that his vehicle was outside and told him to leave. Solution went outside and called for an ambulance. Approximately 20 to 30 minutes later an ambulance arrived.

At an unspecified point during the incident, \$87(2)(6) requested business cards from the PO Alvarado and PO Keegan and did not receive any.

A photo provided by \$87(2)(6) which was taken on an unspecified date after the incident showed minor lacerations to the left side of \$87(2)(6) s face and lip as well as swelling to his left cheek (**BR 33**).

PO Alvarado stated (**BR 18**) that he did not believe that \$\frac{87(2)(6)}{2}\$ requested medical attention. \$\frac{87(2)(6)}{2}\$ possibly mentioned medical treatment when he was leaving. PO Alvarado stated he offered medical attention to \$\frac{87(2)(6)}{2}\$ but did not recall at which point during the process. An ambulance responded to the stationhouse. PO Alvarado did not know who called the ambulance. PO Alvarado did not recall speaking to any supervisors about \$\frac{87(2)(6)}{2}\$ needing medical attention. PO Alvarado completed a medical treatment of prisoner form.

PO Alvarado did not recall \$87(2)(b) asking for a business card and did not know whether PO Keegan or Sgt. Negersmith gave \$87(2)(b) a business card.

PO Keegan stated (BR 19) that he never saw any issues with steps of the hospital point in the moment, but he did hear it while listening to the body-worn camera. PO Keegan stated that medical treatment of prisoner form was definitely offered to stated that medical treatment of prisoner form was completed.  During his interview, PO Keegan's body-worn footage (BR 09; video, BR 16, summary) was shown from 9:30 minutes to 10:00 minutes during which states he needs to go to the hospital. PO Keegan did not independently recall whether he heard states he needs to go to the hospital in the moment, but he did hear it while listening to the body-worn camera. PO Keegan stated that medical attention was definitely offered to states he needs to go to must have refused because the medical treatment of prisoner form stated that states he needs as Keegan stated that stated (BR 20) that states he needs to go to never asked for medical treatment and he did not observe states he medical treatment of prisoner form showed that states as Complained of dizziness and refused medical attention (BR 34).  States he needs to go to the hospital in the moment, but he did hear it while listening to the body-worn camera. PO Keegan stated that medical attention was definitely offered to states he needs to go to the hospital in the moment, but he did hear it while listening to the body-worn camera. PO Keegan stated that medical attention was definitely offered to states he needs to go to the hospital in the moment, but he did hear it while listening to the body-worn camera. PO Keegan stated that medical attention was definitely offered to states he needs to go to the hospital heart states he needs to go to the hospital heart states he needs to go to the hospital heart states he needs to go to the hospital heart states he needs to go to the hospital heart states he needs to go to the hospital heart states he needs to go to the hospital heart states he needs to go to the hospital heart states he needs to go to the hospital heart states he needs t
Civilian and Officer CCRB Histories
• § 87(2)(b)
<ul> <li>Sgt. Negersmith has been a member of service for 14 years and named a subject in two additional CCRB complaints and nine allegations, none of which were substantiated.</li> <li>PO Alvarado has been a member of service for 4 years and named a subject in seven additional CCRB complaints and 24 allegations, two of which were substantiated.         <ul> <li>201900379 involved substantiated allegations of a search of premises and a discourteous word. The Board recommended Formalized Training and the NYPD imposed Instruction.</li> </ul> </li> <li>PO Keegan has been a member of service for six years and named a subject in four additional CCRB complaints with 13 allegations, none of which were substantiated.</li> </ul>
Mediation, Civil, and Criminal Histories
This complaint was not suitable for mediation.
• On January 3, 2022, a FOIL request was submitted to the New York City Comptroller's Office to inform of any Notice of Claim, the results of which will be added to the case file upon receipt ( <b>BR 36</b> ).
§ 87(2)(b)
Squad: 11

**CCRB Case # 202002737** 

Investigator:	Kelly Lyon	Inv. Kelly Lyon	1/12/2022
	Signature	Print Title & Name	Date
Squad Leader:	Edwin Pena Signature	IM Edwin Pena Print Title & Name	01/12/22 Date
Reviewer:			
	Signature	Print Title & Name	Date